ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Amendment of Parts 1, 2 and 21	)	PR Docket No. 92-80
of the Commission's Rules	)	
Governing Use of Frequencies	)	
in the 2.1 and 2.5 GHz Bands	)	

ORIGINAL FILE

COMMENTS OF UNITED COMMUNICATIONS, LTD.

Submitted by:

UNITED COMMUNICATIONS, LTD.

Robyn G. Nietert, Esq.
Brown Finn & Nietert, Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(202) 887-0600

June 29, 1992

TABLE OF CONTENTS

SUMMARY

United supports the Commission's efforts to issue the Notice in order to address the significant problems that exist in the rules and policies governing wireless cable operators. Wireless cable is an evolving technology and as it evolves regulatory policies governing its operations must also necessarily evolve. Of paramount concern to United and the wireless cable industry as a whole is the need to revise regulations in a manner that balances the realities of launching and sustaining an on-going commercial operation with the need to protect ITFS interests and the recognition that application processing procedures must be streamlined so that they can be administered by a federal agency with limited resources.

The present interference analysis requirements of the Rules should be retained. The proposed fixed mileage separation criteria would rob operators of essential flexibility in system configuration. Consolidation of the MDS/ITFS services will allow the Commission to eliminate duplication of tasks and make available additional resources. Development of the comprehensive data base will result in the capacity to develop a computer program to analyze technical proposals on an expedited basis. This should eliminate the need for a fixed mileage separation criteria. Additionally, United strongly opposes the proposal to take wireless cable systems off the air based on ITFS interference complaints made within 30 days of institution of initial wireless cable service. Such a provision is unnecessary and unworkable in the real world.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of Frequencies in the 2.1 and 2.5 GHz Bands	)	PR Docket No. 92-80

COMMENTS OF UNITED COMMUNICATIONS, LTD.

United Communications, Ltd. ("United"), through counsel and pursuant to Section 1.419 of the Commission's Rules, hereby submits its comments in response to the Notice of Proposed Rulemaking, FCC 92-173, released May 8, 1992 ("Notice"), in the captioned proceeding.

I. Background.

United has recently entered the wireless cable industry to develop wireless cable service in medium sized Metropolitan Statistical Areas ("MSAs"). It is currently involved in channel acquisition in its initial target MSA. As a new entrant in the wireless cable industry, United has a vital interest in the outcome of the Commission's Notice of Proposed Rulemaking ("Notice").

The issues of primary concern to United in the Notice are the proposed institution of a fixed mileage separation criteria; the Commission's processing procedures for applications; the establishment of the proposed consolidated data base; and, the notification requirement regarding ITFS licensees. United's comments will address these issues.

As a new entrant in the wireless cable industry, United applauds the Commission's efforts to eliminate the regulatory roadblocks which hamper wireless cable operators. It is United's belief that wireless cable operations can provide consumers with a viable alternative to conventional cable service and can also bring service to areas unserved by cable. In its analysis of the industry, United has found that even in the nation's metropolitan areas there are generally pockets of residents that are unserved by cable. Because of its unique operating flexibility, wireless cable can serve these uncabled consumers and provide competition to cable consumers, thereby helping to fulfill the Commission's public interest mandate.

Although the wireless cable industry has entered an unprecedented upswing in growth, it still faces one enormous problem: capital formation. Attracting capital for institution of new systems and expansion of existing operations is difficult because of current economic conditions, federal financial regulations, critical problems in institutional lending policies and federal regulatory uncertainty and roadblocks regarding channel acquisition and licensing policies. To the extent positive action is taken in any of these areas it improves lenders' assessment of the industry and increases the likelihood that investment capital will be attracted to wireless cable projects.

It is simply beyond the control of United or the wireless cable industry in general to impact some of these critical issues such as the country's general economic conditions or the need for

reformation of institutional lending policies. However, the federal policies that affect licensing and channel acquisition is an area where the FCC can take positive action. Hopefully, through the input of United and other members of the industry in this rulemaking proceeding, the FCC can reallocate its resources and reform its policies to promote wireless cable growth and help insure the viability of the industry while also safeguarding the future of ITFS operations and streamlining its own application processing workload.

II. ITFS Licensees Do Not Require and Should Not Be Given Authority Which Can Result In Immediate Termination Of Newly Initiated Wireless Cable Operations.

Contained in ¶15 of the Notice is a proposed requirement that would be lethal to the wireless cable industry. It proposes that in addition to requiring MDS applicants to demonstrate protection of existing ITFS co- and adjacent channel stations pursuant to Section 74-903(a) and (b) of the Rules, such ITFS station would be entitled to insure such protection is afforded in actual practice. The insurance would take the form of the procedure described in footnote 29 of the Notice.

The Commission proposes that MDS licensees would be required to contact any ITFS co-channel or adjacent channel licensee within 112 kilometers (70 miles) or 80 kilometers (50 miles), respectively of the MDS transmitter site at least fourteen days prior to operating and to notify the ITFS licensee of the exact time that operations will begin. If no interference occurs to the ITFS operator, or if the ITFS operator fails to complain, the MDS

licensee would become unconditional in thirty days. But if interference were to occur the Commission could then require the MDS operator to cease operating immediately without a hearing. Any MDS operator that failed to cease operations would be subject to forfeiture or license revocation.

Before resuming normal operations the Commission proposes that the MDS operator that had ceased operating be required to reduce its signal to the required levels as measured at the out-put terminal of the ITFS receiving antenna. If the MDS operator failed to satisfy these requirements, it could result in license cancellation for failure to comply. Although the ITFS operator would be required to cooperate in all tests, failure to cooperate would result in protection based on measurements using an equivalent antenna in the immediate area of the ITFS receive station and subsequently the ITFS operator would lose the right to require cessation of the MDS station's operation. Under the scheme the Commission proposes, the ITFS licensee would have the initial burden of going forward to demonstrate interference from an MDS licensee. However, once it was deemed that the ITFS operator had met its initial burden, then the burden to disprove the existence of such interference would shift to the MDS licensee. Simply put, in the real-world of commercial wireless cable operations such a procedure is intolerable.

This "no-hearing" cessation-of-operation procedure undermines the ability of a commercial MDS operator to institute service. First and foremost, this proposal introduces an unacceptable

element of uncertainty into a commercial operation. After expending hundreds of thousands or millions of dollars for head-end equipment, receivers, construction, installation, promotion and all the other expenses entailed in launching a new business, the wireless cable operator could be shut down within hours of initiating operations, based on the unverified claim of interference by an ITFS system.

The proposal concedes to ITFS operators a level of control over commercial MDS operations that any prudent financial institution or other member of the investment community will find unacceptable. It authorizes the ITFS operator to make an initial unilateral determination that interference has occurred upon initiation of operations, and furthermore permits the Commission to terminate a licensee's operation without a hearing as to the quality or level of interference claimed by the ITFS operator. While the MDS operator is off the air it would be the obligation of the operator to demonstrate a resolution of interference before resuming operation. In other words, this proposal permits a system to be shutdown <u>indefinitely</u> in a summary fashion.[1]

---

[1] It is inconceivable that investors would consider wireless cable to be a prudent investment where the MDS system operations can be so summarily terminated.

Although the Commission proposes that the interference be measured at the output terminals of the ITFS receive antenna and suggests that the MDS licensee would be required to be reduce power only to the required levels, the exercise of verifying this procedure could take weeks. Furthermore, there is no guarantee that the ITFS and MDS operators would agree on the measurements. This proposal would permit ITFS operators to cause the termination of commercial operations while the exact nature and extent of the interference is argued. Again, such a proposal is unworkable in the business world.

Although the Commission proposes to sanction any ITFS operator that fails to cooperate fully in verifying or reducing perceived interference by allowing interim resumption of MDS service, the time and manpower to police such a system would be a drain on Commission resources that it can ill afford. There is no standard set forth concerning what constitutes "cooperation" by the ITFS operator. And even "uncooperative" ITFS operators would receive protection based on measurements using equivalent antennas in the immediate area of the involved ITFS receive antenna.[2] Once the

---

[2] The NPRM does not elaborate on whether such measurements would be made by the MDS operator or by staff of the FCC's Field Operations Bureau. (Presumably they would not be made by staff of the "uncooperative" ITFS operator, although the NPRM is silent on this point.) If the measurements must be made by FCC staff and if MDS operators are required to operate at some power level below that specified in the license pending the scheduling of a staff inspection, the MDS operator will be unduly hamstrung. The complications presented by implementing any "uncooperative ITFS operator" procedure are such that they independently militate against adoption of the "no-hearing" cessation proposal.

ITFS operator meets an initial "burden" of going forward to demonstrate interference from an MDS licensee, the burden of disproving such interference would shift to the MDS licensee. Again, whether or not the ITFS licensee has met the initial showing required and whether or not the MDS licensee has taken the necessary steps to eliminate the interference subject to disagreement. Settling the disagreements will necessarily consume an enormous portion of the Commission's resources if the wireless operator is off the air while the interference is being verified and rectified.

Unfortunately, the proposed no-hearing cessation requirement is subject to abuse from profiteers who could hold out the prospect of the development of ITFS systems to unwitting educational institutions and then, utilizing the institutions to obtain ITFS channels, subsequently utilize those ITFS channels as a bargaining chip to coerce legitimate wireless cable operators. Unfortunately, allegations of such abuse have already surfaced at the Commission.[3]

Providing actual interference protection in accordance with Section 74.903(a) and (b) to all ITFS registered receive sites in

---

[3] See, March 20, 1992 letter to Charles W. Kelly, Esq., Chief, Enforcement Division, Mass Media Bureau, requesting the institution of a Section 403 inquiry into the conduct of Rural Vision, an ITFS lessee of excess capacity that is alleged to have utilized its relationship with ITFS licensees to abuse the Commission's processes. See also, Petition to Deny filed January 13, 1992, In Re Applications of Lonoke School District, File No. BPLIF-910909DA; Beebe Public Schools, File No. BPLIF-910909DB; Pulaski County School District, File No. BPLIF-910909DC; Jacksonville Christian Academy, File No. BPLIF-910909DD; Little Rock School District, File No. BPLIF-910909DE; and, Joint Petition to Deny In Re Application of McGregor Independent School District, File No. BPLIF-910604DD, filed March 19, 1992.

existence at the time the MDS transmitter is licensed, but without the summary cessation-of-MDS-service condition, assures the ITFS licensee of interference-free operation, while balancing the needs of the wireless cable community for stability and certainty in continuing operations once a system has been constructed and commenced service to the public. Currently, interference that becomes detectable only after a system becomes operational has been resolved for the most part without interjection of strict Commission standards.[4]

The ITFS operator and the MDS operator have over the years developed a relationship of mutual dependence. Realistically, most ITFS operations exist because of subsidization by commercial wireless operators. In fact the use of ITFS systems is currently expanding because wireless cable operations are expanding. Cooperation between ITFS users and commercial operators is increasing and this continued cooperation will ensure that ITFS operations remain interference free. Current Commission policies equitably balance the need for ITFS interference protection with the requirement for certainty in commercial operations. The commercial reality that wireless cable operators need to access excess ITFS channel capacity and the financial reality that ITFS operations need to lease such excess capacity has created a market place systems of checks and balances which should not be altered by the imposition of unnecessary federal regulation.

---

[4] In its Order on Reconsideration, Gen. Docket Nos. 90-54, 80-113, 6 FCC Rcd. 6764 (1991), the Commission declined to adopt formal procedures to resolve ITFS "real-world" interference and decided to retain its informal procedures to resolve interference disputes among ITFS, OFS and MDS services.

III. Flexibility in System Design Is of Critical Importance to Wireless Cable Operators.

The Notice at ¶12, proposes to eliminate the current noninterference criteria of Section 74.903 of the Rules and replace it with a strict mileage separation standard requiring that proposed facilities be located at least 80 kilometers from all existing and previously applied for co-channel stations, and at least 50 kilometers from all such adjacent-channel stations. Applicants would no longer be allowed to engineer their systems to provide the 45 db desired-to-undesired signal (C/I) ratio for co-channel interference protection and the 0 db desired-to-undesired signal (C/I) ratio for adjacent channel systems contained in Section 74.903(a) and (b) of the Rules.[5] The purported advantage of the proposed alternative to interference analyses is that the use of the standard separation requirement would permit expedited processing of pending applications, as it would eliminate the need to verify and analyze the applicant's interference showing.

The adoption of such rigid separation requirements would severely inhibit the development of competitive wireless cable systems in the name of expedited processing of applications. Treating pending and future applications under a different standard than existing stations will prohibit many existing operators from adding desperately needed channel capacity. As the Commission is aware, channel expansion is essential if a wireless cable system

---

[5] The Second Report & Order, Gen. Docket No. 90-54, 6 FCC Rcd. 6792 (1991), and the Order on Reconsideration, supra, contained certain liberalizing modifications to the adjacent channel interference protection criteria.

is to be competitive. With a maximum of 33 channels available to wireless cable operators (in the most ideal circumstances), any policy that threatens to limit channel use is deadly. Competing against cable systems that have an average of 54 channels (with some systems as large as 112 channels) is difficult enough -- new regulations that encroach on access to the limited channels that are now available could send existing and proposed wireless cable operations into a tailspin.

Realistically, there is no need to change the present criteria in order to increase processing speed. The current interference analysis standard can be rendered more workable from the application processing standpoint by modifying the Commission's approach to processing. Initially, the use of fixed separation standards will not necessarily result in expedited processing of MDS applications. There will still be considerable disagreement over whether stations to be protected are entitled to such protection, whether they are properly licensed or in default, whether they are properly registered receive sites, and if properly registered, are they bona fide receive sites. Then, of course, there is the issue of waivers. If such a draconian standard is adopted the Commission can reasonably expect a deluge of waivers which must be individually analyzed and considered.

Rather, a more workable solution would be the development of a computer program to analyze whether or not an applicant's technical proposal complies with the Commission's interference

protection standards contained in the Rules.[6]

The Commission is proposing to overhaul and update its entire MDS and ITFS data bases and to consolidate them into one data base. Notice at ¶22. With this accurate, up-to-date data base, the Commission staff can write a computer program which can determine whether or not any given technical proposal meets the Commission's existing interference standards. The first step in processing any pending or future MDS or ITFS application would be to run the technical proposal through the computer program to determine whether or not it meets the current protection standards set forth in the rules. This would substantially alleviate the current backlog which develops from manual review of the technical proposal of all applicants. Clearly, staff review of the technical proposals each of the tens of thousands of applications currently pending before the Commission is impossible if there is to be any semblance of timeliness in the processing of those applications. But adoption of an arbitrary standard of fixed mileage separation to alleviate a processing glitch is akin to throwing the baby out with the bath water. The Commission is urged to reconsider the devastating impact of its fixed mileage separation proposal on the

---

[6] It is understood that the Commission currently uses a similar process to analyze technical proposals for non-commercial FM stations. Under Section 73.509 of the Rules, an applicant for a non-commercial FM station can drop in a station where it can demonstrate compliance with the Commission's interference standards. Even in the commercial FM band the Commission has recognized that the spectrum will be utilized more effectively and that service will best be provided to the public if it allows applicants to demonstrate non-interference through engineering analysis rather than rigid spacing criteria. See, Section 73.215 of the Rules.

viability of wireless cable operations and to adopt a more workable solution to the application processing problem.

IV. The Mass Media Is the Appropriate Bureau For Consolidation of MDS/ITFS Application Processing.

In the Notice at ¶¶ 6 and 7, the Commission proposes various alternatives for the relocation of MDS processing. United fully supports the Commission's actions to consolidate application processing in one locale. United urges the Commission to utilize the expertise of the Mass Media Bureau to consolidate MDS and ITFS application processing.

The MDS and ITFS services are inextricably tied together and from a practical standpoint, almost all MDS operators need to have at least part time use of ITFS channels in order to have sufficient channel capacity to deliver a competitive video entertainment package. Moreover, MDS operators are an important and often essential source of capital for the construction of ITFS systems. Both services share the same 2596 to 2644 MHz band utilizing the same type of equipment. The propagation characteristics are identical. Since the Mass Media Bureau regulates the ITFS, it is logical that the Mass Media Bureau also regulate the MDS.

From a practical standpoint, if the same Bureau were to regulate both ITFS and MDS, it is much more likely that the timing of the grant of construction permits or conditional licenses for both MDS and ITFS channels in the same geographic area would occur simultaneously, or at least in close chronological proximity. The Commission must achieve such congruence in the timing of grants if

the Commission is to foster a viable wireless cable video entertainment industry.[7] For this reason, relocation of MDS to the Mass Media Bureau is not only appropriate, but essential.

As part of the relocation of MDS to the Mass Media Bureau, the Commission, in promulgating final rules in this proceeding, could also revise the MDS application form and exhibits required by that form, so as to delete the type of information which is irrelevant to MDS and to ease the processor's task. For example, the MDS application form need not include information requests relative to other Part 21 services that are, unlike MDS, primarily common carrier services.[8]

As a Mass Media service, MDS applicants should be able to file applications based upon reasonable assurance of the availability of the proposed transmitter site (which is the case in other Mass Media contexts), rather than having a binding contractual

---

[7] Currently a wireless cable company aggregating E and F channels, H-channels, commercial ITFS channels and channels leased pursuant to an agreement with an ITFS licensee could have numerous different deadlines for the construction of the various channel groups. This is an intolerable situation. In the competitive marketplace the wireless cable operator must launch a service with a group of channels sufficient to compete with cable service or to meet the consumer demand. Requiring operators to construct four channel groups (or single H channels) by different deadlines is an enormous unnecessary financial burden that serves no purpose. Immediate relief of this problem is warranted. Initially, the Commission could extend any existing licensee's construction deadlines to coincide with the last construction deadline of any pending channel group application the licensee has pending in a given market.

[8] Thus, for example, the MDS application form need not contain questions relating to Section 214 authorizations, ownership and control of facilities, subscriber affiliation, tariffs, state or local franchises, or maintenance facilities.

arrangement (in the form of a lease or option to lease) with the property owner at the time of filing. Requiring a binding lease or lease option at the time of filing goes beyond the need to insure that an applicant is qualified and needlessly wastes capital which could otherwise be used to benefit the public interest.

Because the Mass Media Bureau has considerable experience in applying the "reasonable assurance" standard of site availability, which experience the Private Radio Bureau lacks, the changes in the MDS application format which are likely to result from this proceeding also dictate in favor in relocation of processing to the Mass Media Bureau.[9]

V. Conclusion.

United supports the Commission's efforts to issue the Notice in order to address the significant problems that exist in the rules and policies governing wireless cable operators. Wireless cable is an evolving technology and as it evolves regulatory policies governing its operations must also necessarily evolve. Of paramount concern to United and the wireless cable industry as a whole is the need to revise regulations in a manner that balances the realities of launching and sustaining an on-going commercial operation with the need to protect ITFS interests and the recognition that application processing procedures must be

---

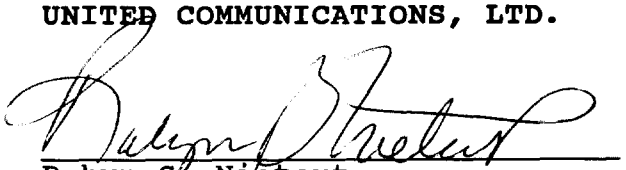
[9] The NPRM, at ¶8, requests comment on whether MDS should be reclassified as a private radio service to be regulated under Part 94 and specifically whether there are benefits to MDS operators in being reclassified as private radio licensees. So long as MDS is removed completely from the Common Carrier Bureau and reallocated to the Mass Media Bureau the Commission's goal of alleviating wireless cable operators from state and local regulations would be achieved.

streamlined so that they can be administered by a federal agency with limited resources.

Taking these issues into consideration, United believes the present interference analysis requirements of the Rules should be retained. The proposed fixed mileage separation criteria would rob operators of the flexibility in system configuration that is essential to designing a commercially viable wireless cable facility. Consolidation of the MDS/ITFS services in the Mass Media Bureau will allow the Commission to eliminate duplication of tasks and make available additional resources. Development of the comprehensive data base will result in the capacity to develop a computer program to analyze technical proposals on an expedited basis. This should eliminate the need to adopt a fixed mileage separation criteria solely to expedite application processing. Additionally, the Commission is urged not to give ITFS operators the power to shutdown wireless operations based on interference complaints within 30 days of initial operation by the wireless cable system. Such a proposal is unnecessary and unworkable. The Commission is urged to consider these factors in adopting its final rules.

Respectfully submitted,

UNITED COMMUNICATIONS, LTD.

By: 

Robyn G. Nietert
Brown Finn & Nietert, Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(202) 887-0600